

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

HOLDINGS ACQUISITION CO., L.P. d/b/a
RIVERS CASINO¹

Employer

and

Case 6-RC-12741

RETAIL, WHOLESALE, DEPARTMENT STORE
UNION (RWDSU) a/w UNITED FOOD AND
COMMERCIAL WORKERS UNION²

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Holdings Acquisition Co., L.P. d/b/a Rivers Casino, operates an entertainment complex consisting of a casino with slot machines and eight restaurants and bars located on the North Shore area of Pittsburgh, Pennsylvania. The Petitioner, Retail, Wholesale, Department Store Union (RWDSU) a/w United Food and Commercial Workers Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all players club representatives and player development ambassadors. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: Whether a unit limited to players club representatives and player development ambassadors constitutes an appropriate unit.

Contrary to the Petitioner, the Employer asserts that the players club representatives and player development ambassadors do not share a community of interest separate and distinct from other nonsupervisory employees in the Marketing Department.

The Employer contends that the smallest appropriate unit consists of all bus marketing coordinators, the bus marketing specialist,³ events/promotions specialist, marketing generalist specialist, marketing analyst and marketing administrative assistant⁴ in addition to the players club representatives and player development ambassadors. The Petitioner has indicated a willingness to proceed to an election in any unit found appropriate. The unit sought by the Petitioner has approximately 30 employees, while the unit the Employer seeks would include about 40 employees. There is no history of collective bargaining for any of the employees involved herein.

I have considered the evidence and the arguments presented by the parties on the issue presented. As discussed below, I have concluded that the players club representatives and player development ambassadors do not possess a community of interest separate and distinct from the other nonsupervisory employees in the Marketing Department, and, therefore, do not constitute a separate appropriate unit. Rather, I have concluded that the smallest appropriate

³ In its brief, the Petitioner asserted that, in addition to lacking a community of interest with the petitioned-for employees, the bus marketing specialist should be excluded on the basis that she is a statutory supervisor. The Employer filed a motion to strike this portion of the Petitioner's brief because the parties entered into a stipulation as to the supervisory status of certain individuals and because the Petitioner did not raise the alleged supervisory status of the bus marketing specialist at the hearing. The Petitioner opposed this motion. The Employer's motion is denied inasmuch as the stipulation as to supervisory status does not preclude either party from taking a position as to an individual who was not the subject of the stipulation. In addition, regardless of the parties' positions at the hearing, the undersigned is charged with determining eligibility based on the evidence in the record.

⁴ There are five bus marketing coordinators, one bus marketing specialist, one events/promotions specialist, one marketing and generalist specialist, one marketing analyst and one marketing administrative assistant.

unit must include the bus marketing coordinators, events/promotions specialist, marketing and generalist specialist, marketing analyst and marketing administrative assistant. I have also determined that the bus marketing specialist will be permitted to vote subject to challenge in the election directed herein inasmuch as based on the record it is unclear whether the bus marketing specialist possesses supervisory authority. Accordingly, I have directed an election in the unit found appropriate herein.

To provide a context for my discussion of the issue presented, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusion on the issue raised herein.

I. OVERVIEW OF OPERATIONS

As noted, the Employer is engaged in the operation of a casino at its Pittsburgh, Pennsylvania, facility. The casino began operations in August 2009. Since that time, the Employer has offered slot machines to its patrons. The Employer expects to add table games in the summer of 2010 depending upon regulatory approval. The Employer's operation is divided into various departments including Marketing, Slots, Food and Beverage, Cage Cashiering, Environmental Services, Maintenance, Facilities and Valet. Solely involved in this proceeding is the Employer's Marketing Department.⁵

The Employer's overall operations are under the direction of General Manager Todd Moyer. The Employer's Marketing Department is the responsibility of Vice President of Marketing Danielle Bateman. Reporting to Bateman are Players Club Manager Janet Haag, Marketing Manager Keira Finnegan and Director of Business Development Affairs George F. Matta, II.

The petitioned-for players club representatives and player development ambassadors⁶ report directly to the five players club supervisors,⁷ who, in turn, report to Players Club Manager

⁵ When regulatory approval is granted, the table games operation will be included in the Marketing Department.

⁶ For ease of reference these two positions will be referred to as representatives and ambassadors.

Haag. The Employer's five bus marketing coordinators, the bus marketing specialist, event/promotions specialist, marketing and generalist specialist, the marketing analyst and the marketing administrative assistant, all report to Marketing Manager Keira Finnegan.⁸

The main entrance to the facility opens into a first floor foyer which is surrounded by the Employer's casino. To the right of the casino is the players club, which consists of a room with customer windows where customers can consult with representatives. Beyond the players club is the cashier's cage where money is kept. Past the cashiers cage is the bus lobby where patrons arriving in buses enter the facility. In the bus lobby are approximately six customer windows. Outside the bus lobby is a satellite booth which appears to be a replica of the players club. The Marketing Department administrative office is located on the second floor of the facility. Vice President Bateman's office is located in this area as well as other offices and cubicles. The record reflects that the Employer's casino operates 24 hours per day, seven days per week.

II. REPRESENTATIVES AND AMBASSADORS

The representatives work at the customer windows in the players club area essentially performing customer service functions. Specifically, the representatives sign up customers for players cards. Players cards are used by the Employer to reward customers for their play by providing food and drink vouchers or free slot machine play. When the customer receives the players card, the customer chooses a pin number. The representatives are responsible for resetting pin numbers as needed. Representatives are also responsible for directing customers and answering their questions about the casino and the various promotions occurring on a given day.

⁷ The five players club supervisors are: David Davidson, Lauren Dolby, Barbara Domagalla, Calvin Early and Brandon Yachonis.

⁸ The parties stipulated, and I find, that Danielle Bateman, Janet Haag, George F. Matta, II, Keira Finnegan and the five players club supervisors are supervisors within the meaning of Section 2(11) of the Act based on their authority to hire, fire or discipline employees or to effectively recommend such actions.

The ambassadors generally work throughout the casino signing up patrons for players cards and resetting pin numbers. There are computer stations throughout the casino where the ambassadors perform these functions. However, the ambassadors can also perform these functions at the windows of the players club booth, bus lobby or satellite booth. The ambassadors also have a small customer service office from which they make calls.

One ambassador, Colleen Kennedy, works four hours on the casino floor and spends the balance of her time in the Marketing Department administrative office on the second floor performing various functions such as answering customer calls and email messages and maintaining the Employer's self exclusion books.⁹ Kennedy also assists the marketing analyst when they check data entered on the computer for errors.

The record contains evidence that representatives and ambassadors work on various promotions with the bus marketing specialist, the events/promotions specialist, or the marketing and generalist specialist. For example, representatives and ambassadors worked with one of the specialists during promotions that ran through the football and hockey seasons. The promotions involved adding money to the players cards of customers who were present in the casino when a touchdown or goal was scored. Other promotions at which a representative or ambassador has worked with specialists and bus marketing coordinators include the March mania promotion and the Monday karaoke night.

III. BUS MARKETING SPECIALIST AND BUS MARKETING COORDINATORS

The bus lobby, located on the first floor of the facility, is the area where patrons exiting a bus enter the casino. The Employer provides incentives to bus patrons so as to attract groups of customers to the facility. Currently, the Employer is offering \$20 in free slots play and \$5 in food. Either the bus marketing specialist or a bus marketing coordinator enters the bus to

⁹ The record does not reflect the exact purpose of the self exclusion books, but does establish that these books are kept pursuant to government regulations.

welcome the customers to the casino and leads them off the bus. Some of these patrons have players cards, but others do not. The bus marketing specialist or coordinator hands the customers different strands of colored beads to signify whether or not they have players cards. Then, the customers without players cards are directed either to the bus lobby, where the bus marketing coordinators will sign them up, or to the players club where they will be signed up by representatives. The customers who have players cards often require information about promotions or assistance with their pin numbers from either representatives or bus marketing coordinators. When several buses arrive simultaneously,¹⁰ the Employer also utilizes a satellite booth¹¹ to speed up the processing of the bus clientele.

When the facility first opened in August 2009, the Employer hired Kerrie Moriarty as the bus marketing specialist to greet the patrons who arrived at the facility via bus. The buses generally arrive between 10:00 a.m. and noon and leave later in the day.

From August to November 2009 the bus volume was too great for bus marketing specialist Moriarty to handle alone. Consequently, some combination of representatives, ambassadors, the events/promotions specialist, marketing and generalist specialist, marketing analyst and marketing administrative assistant worked in the bus lobby from 5 to 8 hours per day. In November 2009, the Employer created the bus marketing coordinator position to handle customers arriving on the tour buses. With the creation and filling of the five bus coordinator positions, the representatives and ambassadors were relieved of spending so much of their time processing the bus trip patrons so that they could attend to the other customers. However, the record reflects that spikes occur almost daily during the months of March through November. When this occurs the marketing administrative assistant and events/promotions specialist or the

¹⁰ Such situations are referred to in the record as “spikes.”

¹¹ The satellite booth is an overflow area which appears to be a replica of the players club area. This booth has six or seven windows at which customers can sign up for players cards. Vice President Bateman admitted that the satellite booth is usually locked and that she could not testify with specificity how often it has been used.

marketing and generalist specialist go to the bus lobby to help process customers to avoid having the customers wait in line for extended periods.

The record establishes that when the bus marketing coordinator position was created two employees transferred from the representative position into the bus marketing coordinator position. A third representative, Liza Reed, began splitting her time such that she spends approximately 20 hours per week as a representative and 20 hours per week as a bus marketing coordinator.¹² The other two bus marketing coordinator positions were apparently filled with outside applicants.

The record reveals that Moriarty accepts any call offs from the bus marketing coordinators. It appears that she is the person to whom the bus marketing coordinators direct most questions and problems. However, if the need arises for discretionary decisions to be made, such as adding money to a patron's players card, the bus marketing coordinators will consult one of the players club supervisors. The record also contains a reference to a disciplinary action to a bus marketing coordinator being jointly issued by Moriarty and Players Club Manager Haag.

IV. OTHER MARKETING DEPARTMENT EMPLOYEES

A. Marketing Analyst

The marketing analyst primarily works with the Employer's database to assign promotion amounts, as determined by Bateman, to the Employer's customers. The analyst also creates groups of individuals within the database to delineate which initiatives should be applied to the accounts of the members of the various groups. Due to the nature of his work, the marketing analyst works on the second floor near Vice President Bateman's office.

It appears from the record that the market analyst works with representatives and ambassadors on the first floor of the facility when he is needed to assist with a promotion or if

¹² The record reflects that the Employer has recently scheduled Reed to also assist in the marketing administrative office on the second floor for several hours two days per week.

there are problems with the database. The record reflects that the marketing analyst worked on the first floor for a New Year's Eve promotion and that he works every fourth Monday at the karaoke night in the Wheelhouse sports bar. The market analyst works with representatives in the players club on the first floor when there has been a problem with the loading of a particular group into the database. The record reveals that this circumstance occurs at least once per month. Finally, as noted previously, the marketing analyst helps out on the first floor when there are spikes in the bus lobby business.

B. Events/Promotions Specialist

The events/promotions specialist ensures that the Employer's events and promotions are executed properly. Initially, the events/promotions specialist develops ideas for a promotion. She then writes the rules for the promotion. Finally, this specialist prepares the script¹³ for the promotion. The script is then distributed to all employees at the facility so that each employee is able to communicate the same information about the events occurring at the casino on a given day.¹⁴ The events/promotions specialist, the marketing and generalist specialist and the marketing analyst are regularly required to go to the first floor to "quiz" one representative, ambassador or bus marketing coordinator about the promotion of the day.

The record indicates that the events/promotions specialist works on the first floor assisting with a promotional event at least once per week, and that she assists with signing up bus patrons every two to three weeks.

C. Marketing and Generalist Specialist

The marketing and generalist specialist assists with all of the marketing functions. The individual in this position creates promotion books which contain the scripts written by the events/promotions specialist, responds to email inquiries of customers and answers the

¹³ A script contains 30 seconds or less of information.

¹⁴ The Employer has different promotions every day of the week.

customer service hot-line. The marketing and generalist specialist works with an advertising agency to provide “visuals” for the various promotions.

The Employer has a promotion involving a karaoke contest every Monday night in the Wheelhouse Bar. The marketing and generalist specialist works at this event on a rotating basis¹⁵ to register patrons and help run the promotion. Also working at this event each week is an ambassador.

The Employer has had other similar events which require the marketing and generalist specialist to work directly with an ambassador. For example, several weeks before the hearing in this matter, the Employer had a “March mania” party at which each attendee had to be processed. The processing involved having the marketing and generalist specialist and an ambassador swipe in each attendee to confirm his or her invitation to the event and to record his or her attendance at the event. Finally, the marketing and generalist specialist also assists in the bus lobby whenever a spike of bus activity requires extra personnel to sign up patrons for players cards.

D. Marketing Administrative Assistant

Marketing administrative assistant, Rachel Helal, is referred to as the jack of all trades in the department. The work location for this position is on the second floor in the administrative office area. Helal’s duties include answering the customer service hotline, answering email inquiries from the marketing inbox and responding to customer letters.¹⁶ She also assists with preparing promotional items. For example, the Employer has promotions involving free candy bars, and Helal is one of the Marketing Department employees who affix stickers to the candy bars. She also attaches free slot play offerings to promotional items. When the Employer anticipates a high volume of bus traffic, Helal is scheduled to assist with the processing of

¹⁵ The marketing analyst, events/promotions specialist, the marketing and generalist specialist and the Marketing Manager each work at the Monday night event on a rotating basis.

¹⁶ The marketing administrative assistant refers the comments or complaints of the customers who spend large amounts of money to Vice President Bateman.

customers. In this regard, the record shows that the marketing administrative assistant was one of the Marketing Department employees who was scheduled to work on the Saturday following the hearing to help with the anticipated spike in bus activity.

V. WAGES, BENEFITS AND WORKING CONDITIONS

Representatives and ambassadors are hourly paid, earning \$12 and \$14 per hour, respectively. Ambassadors receive tips, which are pooled and distributed among ambassadors and representatives. These two groups of employees wear uniforms to work. Representatives wear a shirt and pants; ambassadors wear a shirt with a vest and pants. Both uniforms are tan and brown. The bus marketing coordinators are also hourly paid. Their wage rate is \$12 per hour. It appears from the record that the coordinators are permitted to accept tips, but generally employees in this classification are not offered tips. The specialists and the marketing analysts are salaried employees.¹⁷ The three specialists earn approximately \$34,000 per year and the marketing analyst earns over \$35,000 per year. The marketing administrative assistant is hourly paid and she earns about \$17 per hour. The bus marketing coordinators, the specialists and the marketing analyst wear street clothes to work.

The Employer has employee rules and policies which apply to all employees. All full-time employees enjoy benefits after they have worked 90 days. The benefits include medical,¹⁸ dental, vision, prescription drug, life insurance and long term disability insurance. Both part-time and full-time employees are eligible to participate in the Employer's 401(k) plan with a company match after six months of employment. All employees enjoy free parking and a paid lunch break. All employees can purchase reduced cost meals in the Team Member Dining Room.¹⁹

¹⁷ The bus marketing specialist, events/promotions specialist, marketing and generalist specialist and the marketing analyst are exempt employees under the Fair Labor Standards Act.

¹⁸ The cost to employees for health insurance increases as their salary increases.

¹⁹ This dining room is available to all employees and is open 24 hours per day.

All employees receive an employee identification badge to swipe in and out when arriving or leaving the facility.²⁰

The three specialists and the marketing analyst are salaried employees. As such, they are not required to sign in and out. In addition, these employees receive short term disability insurance.

The Employer posts jobs internally for a period of three to five days during which employees in “good standing” can apply for the position.²¹ There is some dispute in the record as to whether employees in the same department as the job opening must wait 90 days in their current position prior to applying for a new position. Vice President of Human Resources Andre Barnaby testified that the Employer’s policy of waiting 90 days pertains only when an employee applies for a position in a different department, and that this is the policy that any internal department transfers should have followed.²²

The record establishes that the casino and the players club are open and staffed around the clock. Thus, the ambassadors and representatives work on all three shifts. Bus marketing coordinators generally work on the dayshift because most bus traffic occurs during the day. Likewise, the specialists and analysts work primarily on dayshift, but most have worked in the evening when assisting with a promotion.

²⁰ The record indicates that sign-in/out sheets were placed on the counter in the players club by players club supervisors for some period of time. The ambassadors and representatives used the sign in/sign out sheets either because these employees were forgetting to use their ID badge to swipe in and out or because there were problems with the time clock. It appears that the sign in/out sheet was only used by ambassadors and representatives.

²¹ An employee is in good standing if he or she has had eight or less attendance points under the Employer’s attendance system, and, if he or she has not been issued a final written warning. All applications are electronic.

²² Kathy Jo Swan, a players club representative called as a witness by the Petitioner, testified that when she applied for a bus coordinator position, she was told by a manager that she had to wait until she worked 90 days as a representative because the bus marketing coordinators were in a different department.

Gaming regulations require that each employee of the casino have one of three types of licenses.²³ The record reflects that the petitioned-for representatives and ambassadors, as well as the bus marketing coordinators, the bus marketing specialist, events/promotions specialist, marketing and generalist specialist, marketing analyst and marketing administrative assistant all possess a gaming license. The gaming license provides these employees with the ability to sign up customers for players cards and to reset pin numbers. All Marketing Department employees have the same computer access²⁴ except that the marketing analyst, bus marketing specialist and one bus marketing coordinator have the additional capability of creating groups and incentives in the database.

All new employees go through a two-day orientation. The record also indicates that the only training session that the Marketing Department employees have attended was customer service training. All Marketing Department employees attended this training when the facility opened.

VI. ANALYSIS

It is well-established that there is nothing in the statute which requires that the unit sought be the only appropriate unit, the ultimate unit, or the most appropriate unit. The Act requires only that the unit be appropriate. *Overnite Transportation Co.*, 322 NLRB 723 (1996). In determining whether unit employees possess a separate community of interest, the Board examines factors such as common functions and duties, shared skills, functional integration, temporary interchange, frequency of contact with other employees, commonality of wages,

²³ Supervisors and those who exercise discretion are required to possess a “key” license. None of the employees at issue herein has a key license. Employees who do not deal with customers in a gaming capacity such as food and beverage, security and facilities employees, are required to have a nongaming license.

²⁴ Kathy Jo Swan, the witness called by Petitioner, testified as to her understanding that ambassadors and bus marketing coordinators have internet access whereas representatives do not have internet access. Under either version the record is clear that ambassadors and representatives do not share a unique access to the computer.

hours, and other working conditions, permanent transfers, shared supervision, common work location and bargaining history. See generally *Casino Aztar*, 349 NLRB 603 (2007); *Publix Super Markets*, 343 NLRB 1023 (2004); *Alley Drywall, Inc.*, 333 NLRB 1005 (2001); *Hotel Services Group*, 328 NLRB 116 (1999); *Transerv Systems*, 311 NLRB 766 (1993); *Phoenician*, 308 NLRB 826 (1992). Applying these factors, I find that Board precedent does not support a separate unit of representatives and ambassadors apart from the other nonsupervisory Marketing Department employees in the circumstances of this case.

The record reflects that the Marketing Department operates with the unified purpose of providing customer service to increase revenues. Initially, the record establishes that the ambassadors and representatives cannot be distinguished from the bus marketing coordinators on the basis of their job functions, duties or skills. The Employer charges all of these employees with the same basic responsibilities: To perform customer service functions of greeting and directing customers, providing information as to events and promotions and signing up customers for players cards. There is no difference in the skills required for these tasks whether one is working in the casino, the players club, the bus lobby or the satellite booth. The record further establishes that the events/promotions specialist, marketing and generalist specialist, marketing analyst and marketing administrative assistant all regularly staff the bus lobby or the satellite booth when there is a daily spike in bus traffic. All of these individuals also sign up customers with players cards and provide information to customers from the promotion script. Each of the petitioned-for employees and all of the other nonsupervisory Marketing Department employees possess a gaming license. In addition, all of these employees provide customers with identical information which is set forth on the promotion scripts. Accordingly, based on the record, the petitioned-for employees and the other nonsupervisory Marketing Department employees have a high degree of overlap in their job functions. The work of all of the Marketing Department employees involves the same types of tasks, and their general skill

level is quite similar. Thus, no special skills or functions differentiate the representatives and ambassadors from the other nonsupervisory employees in the Marketing Department.

There is also evidence of interchange among Marketing Department employees. One of the representatives, Liza Reed, divides her time between working as a representative, bus marketing coordinator and assisting in the marketing administrative office. In addition, ambassador Colleen Kennedy spends one-half of each shift working in the casino as an ambassador and the other half in the administrative office working with the analyst, specialists and administrative assistant. As well, the record establishes that the specialists, marketing administrative assistant and marketing analyst assist in the bus lobby when there are spikes in the number of buses and number of customers needing assistance to obtain players cards and reset pin numbers. Finally, the nonsupervisory Marketing Department employees assist with promotions as needed and often work side by side with ambassadors and players club representatives at such functions. All of these factors tend to support a finding that the work of the Marketing Department is functionally integrated.

The record establishes that there have been instances of transfer between positions in the Marketing Department. In November 2009 two players club representatives transferred to the then newly created bus marketing coordinator position.

The Employer has policies and rules that apply to all of the nonsupervisory Marketing Department employees. In addition, all of these employees enjoy essentially the same benefits. I note that the salaried employees among the group, the marketing analyst and the three specialists, also receive short term disability insurance. In addition, these salaried employees do not swipe in and out for timekeeping purposes. The salary of the three specialists and the marketing analyst is higher than the hourly rate paid to the ambassadors, representatives and bus marketing coordinators. However, the total compensation of the ambassadors and representatives may be comparable to that of the specialists, marketing analyst and marketing administrative assistant because the ambassadors and representatives receive and pool tips.

The factors of functional integration, similarity in skills, interchange; common working conditions are those which the Board has relied upon where, as here, the petitioned-for unit was too limited in scope. See *Phoenician*, supra; *Casino Aztar*, supra, *Hotel Services Group*, supra. Moreover, the Board has found functional overlap in the operation where employees in different classifications have a designated function but “pitch in” to perform the functions of different classifications when necessary. *United Rentals*, 341 NLRB 540 (2004).

Recognizing that the ambassadors and representatives report to the players club supervisors, who in turn report to the Players Club Manager, and that the rest of the non-supervisory Marketing Department employees report to the Marketing Manager, I note that Vice President of Marketing Bateman has oversight responsibility for both groups. In circumstances such as these, the Board has held that the distinctions in immediate supervision do not warrant a finding that separate groups of employees lack a community of interest. See, e.g., *Casino Aztar*, supra; *Hotel Services Group*, supra.

In light of the common job duties, responsibilities and skills in a functionally integrated department as well as the largely common terms and conditions of employment and the evidence of permanent transfers and interchange among employees, the petitioned-for unit limited to representatives and ambassadors is inappropriate. There are some factors which would support finding that the petitioned-for unit is appropriate. These are the separate immediate supervision, that representatives and ambassadors work on all three shifts and the fact that the salaried employees need not punch in and out and have the extra benefit of short term disability insurance. However, these factors are insufficient to demonstrate that the representatives and ambassadors have a separate community of interest separate from the bus marketing coordinators, bus marketing specialist, events/promotions specialist, marketing and generalist specialist, marketing analyst and marketing administrative assistant. Likewise, although the specialists, the analyst and the marketing administrative assistant spend a significant portion of time in the second floor office area, the record shows that one of the

representatives and one of the ambassadors regularly work on the second floor. Accordingly, I find a unit comprised of the Employer's nonsupervisory Marketing Department employees to be the smallest appropriate unit.

As noted herein, bus marketing specialist Moriarty was the first employee hired to sign up patrons arriving via buses. Since the five bus marketing coordinator positions were created and filled, bus marketing specialist Moriarty, has continued to fulfill the functions of greeting the buses, directing patrons and signing up those who do not already have players cards. The record establishes that the bus marketing specialist also handles both the call offs of bus marketing coordinators and their questions and problems regarding their jobs. While the record reveals that the bus marketing specialist is salaried and that she earns significantly more than the bus marketing coordinators with whom she works, her salary is similar to that of the other specialists in the Marketing Department

The record establishes that the bus marketing specialist issued a disciplinary action to a bus marketing coordinator jointly with Players Club Manager Haag. The record is silent as to the circumstances which led to the discipline, and Moriarty's role, if any, in recommending that the discipline be issued. In these circumstances, it is impossible to determine whether Moriarty has the authority to issue discipline or effectively recommend such action or whether she possesses the other supervisory authorities set forth in Section 2(11) of the Act. Accordingly, I shall permit Kerrie Moriarty to vote, subject to challenge, in the election directed herein.²⁵

VII. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

²⁵ Although I am permitting the bus marketing specialist to vote subject to challenge on the basis that she may be a supervisor, based on her community of interest she would otherwise be included in the unit found appropriate herein.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit²⁶ appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Marketing Department employees employed by the Employer at its Pittsburgh, Pennsylvania facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

VIII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Retail, Wholesale, Department Store Union (RWDSU) a/w United Food and Commercial Workers Union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

²⁶ Although the unit found appropriate herein is broader than that sought by the Petitioner, I shall not dismiss the petition inasmuch as the Petitioner has indicated a willingness to proceed to an election in any unit found appropriate by the undersigned. However, as the Petitioner's showing of interest among employees in the appropriate unit is inadequate, I shall permit it to submit additional authorization cards from such employees within 10 days from the date of this Decision and Direction of Election, the conduct of which election is contingent upon the Petitioner making an adequate showing of interest among employees in the appropriate unit. If, on the other hand, the Petitioner does not desire to participate in an election in the unit herein found appropriate, I shall permit it to withdraw its petition without prejudice upon written notification to the undersigned on its intention to do so within 10 days from the date of this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before May 12, 2010. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website,²⁷ by mail, or by facsimile transmission at 412-395-5986. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

²⁷ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 19, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,²⁸ but may not be filed by facsimile.

DATED: May 5, 2010

/s/Robert W. Chester

Robert W. Chester, Regional Director
NATIONAL LABOR RELATIONS BOARD
Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

Classification Index

440-1740-5000

440-1760-9900

²⁸ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.